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24 *individually, but solely in its representative capacity*  
25 *as trustee of the Nevada Environmental Response*  
26 *Trust*

27 **UNITED STATES DISTRICT COURT**  
28 **DISTRICT OF NEVADA**

LE PETOMANE XXVII, INC., an Illinois  
corporation, not individually, but solely in its  
representative capacity as trustee of the Nevada  
Environmental Response Trust,

Plaintiff,

v.

AMERICAN PACIFIC CORPORATION, a  
Nevada corporation,

Defendant.

Case No.:

**COMPLAINT**

**JURY DEMAND**

Plaintiff, Le Petomane XXVII, Inc., not individually, but solely in its representative  
capacity as trustee of the Nevada Environmental Response Trust ("Trustee"), as and for its

1 Complaint against Defendant American Pacific Corporation (“AMPAC” or “Defendant”), alleges  
2 and states as follows:

3 **Nature of the Action**

4 1. This action is brought under the provisions of the Comprehensive Environmental  
5 Response, Compensation and Liability Act, as amended, 42 U.S.C §§ 9601 et seq. (“CERCLA”).  
6 The Trustee on behalf of the Nevada Environmental Response Trust (“NERT”) seeks, among other  
7 relief:

8 (a) recovery from AMPAC under CERCLA Section 107(a) of response costs expended, and  
9 to be expended, by NERT with respect to the Weir Project, as defined herein;

10 (b) contribution from AMPAC under CERCLA Section 113(f) for response costs expended,  
11 and to be expended, by NERT with respect to the Weir Project, as defined herein;

12 (c) contribution under Nevada Revised Statutes Section 17.225; and,

13 (d) compensatory relief for unjust enrichment.

14 2. In 2017, NERT was ordered by the Nevada Division of Environmental Protection  
15 (“NDEP”) to undertake a removal action related to perchlorate in the Las Vegas Wash, a tributary  
16 to Lake Mead, in connection with the Southern Nevada Water Authority’s (“SNWA”) construction  
17 of two erosion control weirs in the Las Vegas Wash. To date, NERT has spent over \$36 million  
18 (with work ongoing related to decommissioning and costs continuing to accrue) to build, operate,  
19 and decommission the pumping and treatment facilities to treat the perchlorate in groundwater  
20 associated with SNWA’s dewatering activities.

21 3. Subsequent to completing the removal action, NERT discovered that the vast  
22 majority of the perchlorate treated by NERT as part of the removal action originates from a former  
23 manufacturing site that was owned and operated by Defendant AMPAC and its corporate  
24 predecessor, Pacific Engineering & Production Co. of Nevada (“PEPCON”). NERT has spent the  
25 majority of the \$36 million to treat hazardous substances for which AMPAC is legally responsible.

26 4. By this action, NERT seeks to recover from AMPAC the response costs that NERT  
27 incurred to treat AMPAC’s perchlorate. NERT also seeks a declaratory judgment that Defendant  
28 is liable for future response decommissioning costs or damages.

**The Parties**

5. Plaintiff is the trustee of NERT, which is a trust that was established on February 14, 2011 in connection with the confirmation of Tronox LLC's (formerly known as Kerr-McGee Chemical LLC) ("Tronox") Chapter 11 bankruptcy filed in the U.S. Bankruptcy Court for the Southern District of New York, in January 2009. The Trustee is a corporation organized and existing under the laws of the State of Illinois with its headquarters and principal executive offices located in Chicago, Illinois, is the sole trustee of NERT and administers NERT under the terms of a written Trust Agreement.

6. NERT's primary purpose is to own Tronox's former chemical manufacturing facility located approximately 13 miles southeast of the City of Las Vegas in an unincorporated area of Clark County, Nevada ("Henderson Site") and to remediate certain environmental impacts at or migrating from the Henderson Site.

7. The Trustee brings this suit, not individually, but solely in its representative capacity as trustee of the Trust. The Trustee is a citizen of the State of Illinois and of no other state.

8. Defendant AMPAC, the corporate successor to PEPCON, is a corporation organized under the laws of the State of Nevada, with a principal place of business located at 10622 West 6400 North, Cedar City, Utah 84721. AMPAC is a citizen of the State of Nevada and of the State of Utah and no other state.

9. PEPCON formerly owned and, until 1988, operated a chemical manufacturing facility approximately one and a half miles west of the Henderson Site (the "AMPAC Site").

**Jurisdiction and Venue**

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), and 9613(b) (CERCLA grant of jurisdiction); 28 U.S.C. § 1367 (Supplemental Jurisdiction); and 28 U.S.C. § 1332 (Diversity Jurisdiction) in that this is a civil action where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States. A trust "has the citizenship of its trustee or trustees." *Johnson v. Col. Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). The Trustee is the Plaintiff.

1           11.     The Trustee is an Illinois corporation with its headquarters in Chicago, Illinois;  
2 because its “nerve center” is in Illinois, it is a citizen of that state for diversity purposes.

3           12.     AMPAC is a Nevada corporation with its headquarters in Cedar City, Utah; and  
4 because its “nerve center” is in Utah, it is a citizen of that state for diversity purposes.

5           13.     Section 1332(a)(2) “provides district courts with original jurisdiction of all civil  
6 actions where the matter in controversy exceeds the sum or value of \$75,000 and is between citizens  
7 of a state and citizens or subjects of a foreign state.” *JPMorgan Chase Bank v. Traffic Stream (BVI)*  
8 *Infrastructure Ltd.*, 536 U.S. 88, 91 (2002) (internal quotation marks and ellipses omitted).  
9 Therefore, the parties are citizens of different states for purposes of diversity. This action is of a  
10 civil nature involving, exclusive of interest and costs, a sum in excess of \$75,000.00. Every issue  
11 of law and fact in this action is wholly between a plaintiff who is a citizen of a state that is different  
12 from the state of which a defendant is a citizen.

13           14.     Because of the federal question jurisdiction, this Court also has supplemental  
14 jurisdiction pursuant to 28 U.S.C. § 1367(a)-(b) over the state law claims asserted against the  
15 defendant, regardless of the amount in controversy.

16           15.     This Court has general personal jurisdiction over AMPAC because it is organized  
17 and exists under Nevada’s corporate laws, *i.e.*, Nevada Revised Statutes Title 7.

18           16.     This Court also has specific personal jurisdiction over AMPAC because it has  
19 purposefully availed itself of the laws and protections of this forum by conducting business here  
20 by registering with the Nevada Secretary of State as a corporation.

21           17.     Under these circumstances, the exercise of jurisdiction over AMPAC would be  
22 reasonable.

23           18.     Venue lies in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. §  
24 9613(b), and 28 U.S.C. § 1391(b), because the properties at issue are located within this judicial  
25 district, the releases or threatened releases of solid or hazardous wastes or hazardous substances or  
26 materials occurred in this judicial district, a substantial part of the events or omissions giving rise  
27 to the claim occurred in this district, and a substantial part of the property that is the subject of the  
28 action is situated in this district.

19. Venue lies in the unofficial Southern Division of this Court.

**Factual Background**

**A. Historic Operations, Contaminants, and Environmental Response Activities at the AMPAC Site**

20. The PEPCON facility was built near Henderson, Nevada in or about 1958. In 1997, PEPCON merged with, and into AMPAC Development Company, which changed its name to AMPAC, Inc. In 1998, AMPAC, Inc. merged with, and into American Pacific Corporation.

21. From approximately 1958 through 1988, perchlorate was produced at the AMPAC Site. Operations at the AMPAC Site terminated on or about May 4, 1988.

22. During the time PEPCON and AMPAC owned and operated the AMPAC Site, spills and releases of hazardous substances at the AMPAC Site contaminated soil and groundwater at, and beneath the AMPAC Site. Perchlorate contamination in groundwater has been identified at, and emanating from the AMPAC Site.

23. AMPAC installed and operated a perchlorate remediation system to remove perchlorate from groundwater migrating from the AMPAC Site.

24. Notwithstanding the treatment system installed and operated by AMPAC, not all of AMPAC's perchlorate in groundwater is captured by the treatment system and continues to migrate to the north into the Las Vegas Wash.

**B. Historic Operations, Contaminants, and Environmental Response Activities at the Tronox Henderson Site**

25. The Henderson Site was developed in 1942 by the U.S. government as a magnesium production plant in support of the World War II effort. Perchlorate was produced at the Henderson Site beginning in 1952 and ending in 1998.

26. Tronox, the former owner of the Henderson Site, began investigating potential environmental impacts in July 1981 from both current and historic operations.

27. In the late 1990s, Tronox installed a seep water collection system adjacent to the Las Vegas Wash to mitigate the discharge of perchlorate into the Las Vegas Wash and a treatment system to treat the collected perchlorate-impacted groundwater.



1           28. In 2001, Tronox installed a groundwater extraction system downgradient of the  
2 Henderson Site and in 2004, a groundwater treatment system at the Henderson Site. All perchlorate  
3 in groundwater associated with historic releases migrating from the Henderson Site are captured by  
4 the groundwater treatment system at the Henderson Site.

5           **C. Early Perchlorate Detection and Study in the Colorado River and Las Vegas**  
6           **Wash**

7           29. The Las Vegas Wash is a tributary which flows into Lake Mead and the Colorado  
8 River system, which affects approximately 30 million end water users in Nevada, Arizona, and  
9 California. In the late 1990s, perchlorate was detected in the Lower Colorado River Basin system.

10          30. Based on sampling conducted by SNWA and others, the occurrence of perchlorate  
11 in the Lower Colorado River Basin system was determined to have originated in the Las Vegas  
12 Wash. In the late 1990s, perchlorate loadings of up to 1,000 pounds per day were shown to be  
13 entering the Colorado River system.

14          **D. Southern Nevada Water Authority Weir Project**

15          31. In the late 1990s, SNWA, a collection of local agencies which address water issues  
16 on a regional level in Nevada, developed the Las Vegas Wash Stabilization Program to protect  
17 wetlands, reduce erosion, intercept contamination, minimize sediment transport to Lake Mead,  
18 create recreation opportunities, and restore habitat in the Las Vegas Wash.

19          32. Pursuant to this program, SNWA constructed a number of permanent grade  
20 stabilization weirs within the Clark County Wetlands Park. A grade stabilization weir is a physical  
21 barrier placed in a waterbody with the primary purpose to control flow to reduce erosion. In the  
22 late 2000s, SNWA proposed to construct additional weirs within the Las Vegas Wash near Clark  
23 County Wetlands Park as part of this stabilization program.

24          33. Two of the weirs, the Sunrise Mountain Weir and the Historic Lateral Weir, are  
25 located downgradient of the AMPAC Site and the Henderson Site. The weir construction project  
26 required SNWA to “dewater” the construction site areas by extracting groundwater in the vicinity  
27 of the Sunrise Mountain Weir and the Historic Lateral Weir (“Weir Project”).  
28

1           34. The groundwater extracted during the Weir Project was projected to contain  
2 approximately three tons of perchlorate.

3           35. NDEP determined that direct discharge of the groundwater from the Weir Project  
4 into the Las Vegas Wash without treatment would substantially contribute to the continued  
5 exceedance of the Nevada provisional maximum contaminant level for perchlorate of 18 parts per  
6 billion within the Las Vegas Wash, and that any increase in perchlorate loading to the Las Vegas  
7 Wash, a tributary to Lake Mead, and to the Colorado River, would threaten the environment and  
8 drinking water sources for the Las Vegas Valley and for populations in Arizona and Southern  
9 California.

10          36. On April 12, 2016, given that treating groundwater extracted during the Weir Project  
11 was a time-critical removal action, NDEP ordered NERT to provide NDEP with an Engineering  
12 Evaluation/Cost Analysis (“EE/CA”) evaluating the cost, feasibility, evaluation of remedial  
13 alternatives, schedule, and permitting requirements for transferring, conveying and treating  
14 groundwater extracted during the Weir Project before discharge into the Las Vegas Wash. A copy  
15 of the order is attached as Ex. A.

16          37. On August 30, 2016, NERT submitted an EE/CA to NDEP evaluating the cost,  
17 feasibility, evaluation of remedial alternatives, schedule, and permitting requirements for  
18 transferring and treating groundwater extracted during the Weir Project. The EE/CA was released  
19 for public comment and no public comments were received.

20          38. Based on NDEP’s review of the current groundwater data, NDEP believed the Weir  
21 Project was located in an area of the Las Vegas Wash where the perchlorate groundwater plume  
22 from the Henderson Site intersects the Las Vegas Wash.

23          39. On March 3, 2017, NDEP ordered NERT to perform a removal action to treat  
24 perchlorate-impacted groundwater generated during SNWA’s dewatering associated with the Weir  
25 Project (“Weir Order”). NDEP determined that any increase in perchlorate loading to the Las Vegas  
26 Wash, a tributary to Lake Mead, and to the Colorado River, would threaten the environment and  
27 drinking water sources for the Las Vegas Valley and for populations in Arizona and Southern  
28

1 California. The Weir Order required NERT to construct a treatment plant capable of treating 6,900  
2 gallons per minute. A copy of the Weir Order is attached as Ex. B.

3 40. Dewatering operations at the Sunrise Mountain Weir and the Historic Lateral Weir  
4 occurred from January 2018 to August 2018. During the dewatering operations, NERT  
5 continuously operated the treatment plant it constructed consistent with the Weir Order.

6 41. In or about March 2017, Geosyntec Consultants, Inc. prepared a Technical  
7 Memorandum and submitted it to NDEP, that assessed and evaluated the capture zone created by  
8 AMPAC's existing treatment system of the groundwater migrating from the AMPAC Site to the  
9 Las Vegas Wash. The purpose of this analysis was to determine if any perchlorate impacted  
10 groundwater "escaped" the capture zone of AMPAC's system. Based on the data presented in the  
11 Technical Memorandum, NERT determined for the first time, that the vast majority of the  
12 perchlorate contamination in the groundwater that originated from the AMPAC Site, which was  
13 not otherwise captured by the AMPAC treatment system, flowed in the immediate vicinity of the  
14 Weir Project. This contaminated groundwater was the water that SNWA extracted through the Weir  
15 Project construction and NERT was treating.

16 42. Subsequent investigations by NERT, including particle flow analysis and chemical  
17 "fingerprinting" of the perchlorate plumes emanating from the AMPAC Site and the Henderson  
18 Site and extending to the vicinity of the Weir Project, confirmed that the vast majority of the  
19 perchlorate treated by NERT as part of the Weir Project, originated from the AMPAC Site.  
20 Through the chemical analysis, NERT determined that the perchlorate migrating from the AMPAC  
21 Site and the perchlorate migrating from the NERT Site are chemically distinct due to the difference  
22 in levels of chlorate.

23 43. The hazardous substances released at the AMPAC Site have contaminated  
24 groundwater in the vicinity of the AMPAC Site, the vicinity of the Weir Project and the Las Vegas  
25 Wash, and NERT has incurred necessary response costs as a result of the release of hazardous  
26 substances from AMPAC's site. Accordingly, the Trustee, on behalf of NERT, seeks recovery of  
27 and contribution for response costs from AMPAC.

28



**FIRST CAUSE OF ACTION**

**(Cost Recovery Under Section 107 of CERCLA)**

44. Plaintiff repeats and re-alleges all of the foregoing allegations and incorporates the same by this reference.

45. Section 107(a)(4)(B) of CERCLA, 42 U.S.C. § 9607(a)(4)(B), provides that any “covered person . . . shall be liable for . . . any other necessary costs of response incurred by any other person consistent with the national contingency plan [the (“NCP”)].”

46. NERT is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

47. Defendant is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

48. The Henderson Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

49. The AMPAC Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

50. Perchlorate, discovered at and downgradient of the Henderson Site and the AMPAC Site is a “hazardous substance” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

51. During the time that PEPCON and AMPAC owned the AMPAC Site, disposal of hazardous substances occurred at the AMPAC Site within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29).

52. Releases of hazardous substances have occurred at the AMPAC Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and have caused NERT to incur costs in response to those releases.

53. AMPAC is liable under CERCLA as an “owner” or “operator.” An owner or operator includes “any person owning or operating [an onshore facility],” and “any person who at the time of disposal of any hazardous substance owned or operated any facility at which such

1 hazardous substances were disposed of.” Sections 107(a)(1) – (2) and 101(20)(A)(ii) under  
 2 CERCLA, 42 U.S.C. §§ 9607(a)(1) – (2) and 9601(20)(A)(ii).

3 54. NERT has undertaken, and continues to undertake, actions at the Las Vegas Wash  
 4 within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in response to releases  
 5 or threatened releases of hazardous substances.

6 55. NERT has incurred more than \$36 million in costs, which constitute “necessary  
 7 costs of response” incurred in a manner consistent with the NCP under Section 107(a)(4)(B) of  
 8 CERCLA, 42 U.S.C. § 9607(a)(4)(B).

9 56. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. §§ 9607(a), AMPAC is strictly,  
 10 and jointly and severally, liable, or is otherwise liable as provided by applicable law, to NERT for  
 11 cost recovery for all necessary response costs incurred by NERT related to the Weir Project in the  
 12 past, and to be incurred by NERT in the future, in connection with the AMPAC Site.

13 57. NERT seeks cost recovery and/or reimbursement from AMPAC for all response  
 14 costs, together with interest thereon, that NERT has incurred and will incur related to the Weir  
 15 Project as a result of the release of hazardous substances from the AMPAC Site into the  
 16 environment. NERT seeks this cost recovery and/or reimbursement based on AMPAC’s status as  
 17 an owner and/or operator of a facility where hazardous substances and wastes were disposed  
 18 pursuant to CERCLA, 42 U.S.C. §§ 9607(a).

19 58. As a direct and proximate result of AMPAC’s actions, NERT is entitled to recover  
 20 and obtain cost recovery and/or reimbursement for all past, present, and future response costs from  
 21 AMPAC pursuant to CERCLA, 42 U.S.C. § 9607(a).

22 59. NERT also is entitled to interest on the amount recovered on this claim pursuant to  
 23 Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

## 24 **SECOND CAUSE OF ACTION**

### 25 **(Contribution Under CERCLA Section 113)**

26 60. Plaintiff repeats and re-alleges all of the foregoing allegations and incorporates the  
 27 same by this reference.

28

1           61.     Sections 113(f)(1) and (3)(B), 42 U.S.C. §9613(f)(1) and (3)(B), provide in relevant  
2 part, that:

3           Any person may seek contribution from any other person who is liable or  
4 potentially liable under Section 9607(a)....

5           A person who has resolved its liability to the United States or a State for some or  
6 all of a response action or for some or all of the costs of such action in an  
administrative or judicially approved settlement may seek contribution from any  
person who is not party to a settlement....

7           62.     NERT has resolved its liability to the State of Nevada for matters covered by the  
8 Weir Order.

9           63.     AMPAC is a responsible party under CERCLA, but has not resolved its liability to  
10 NERT, the United States or the State of Nevada with respect to the Weir Project.

11           64.     NERT has and will incur costs as a result of the release of hazardous substances  
12 from the AMPAC Site into the environment that are greater than its allocable share of costs and  
13 damages.

14           65.     AMPAC is liable to NERT for those response costs paid by NERT that are in excess  
15 of its allocable share that is properly attributable to AMPAC.

16           66.     NERT requests that the Court determine the Parties' allocable shares with respect to  
17 response costs and damages and determine that AMPAC is liable to NERT for those response costs  
18 and damages paid or incurred by NERT that are in excess of NERT's allocable share and are  
19 properly attributable to AMPAC.

20           67.     Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) NERT is entitled to  
21 recover interest on response costs and damages it has paid or will pay in the future in excess of  
22 AMPAC's allocable share.

23                           **THIRD CAUSE OF ACTION**

24                           **(Declaratory Judgment for Future Response Costs)**

25           68.     The Trustee repeats and re-alleges all of the foregoing allegations and incorporates  
26 the same by this reference.

27           69.     Because NERT contends that AMPAC is responsible for payment of response costs,  
28 an actual and substantial controversy exists between NERT and AMPAC regarding their respective

rights and obligations for the response costs that have been incurred and the response costs that will be incurred to address the contamination associated with the Weir Project. Additional response costs will be needed to restore the Weir Project area to pre-project conditions, which was caused in whole or part by AMPAC and the releases or threatened releases at the AMPAC Site. No adequate or speedy remedy exists for NERT in the absence of such a judicial declaration.

70. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), NERT is entitled to a declaratory judgment against AMPAC that will be binding in any subsequent action to recover further response costs incurred by NERT, in connection with contamination associated with the Weir Project. This determination will prevent a multiplicity of litigation.

#### **FOURTH CAUSE OF ACTION**

##### **(Contribution Under Nevada Law)**

71. The Trustee repeats and re-alleges all of the foregoing allegations and incorporates the same by this reference.

72. Nevada Revised Statutes Section 17.225(1) provides “...where two or more persons become jointly or severally liable in tort for the same injury to person or property ... there is a right of contribution among them even though judgment has not been recovered against all or any of them.”

73. Section 17.225(1) also provides “[t]he right of contribution exists only in favor of a tortfeasor who has paid more than his or her equitable share of the common liability....”

74. Nevada Revised Statutes Section 17.285(4) provides that if there is no judgment, the right of contribution is barred against the tortfeasor seeking contribution unless the tortfeasor has “discharged by payment the common liability within the statute of limitations period applicable to the claimant’s right of action against him or her and has commenced an action for contribution within 1 year after payment...”

75. NERT is a “person” within the meaning of Section 17.225 of Nevada Revised Statutes.

76. AMPAC is a “person” within the meaning of Section 17.225 of Nevada Revised Statutes.

1           77.     AMPAC caused hazardous substances, including perchlorate, to be released from  
2 the AMPAC Site and contaminate the groundwater, and AMPAC's actions were the proximate  
3 cause of the vast majority of the perchlorate contamination in the groundwater in the vicinity of the  
4 Weir Project.

5           78.     As a responsible party, AMPAC is strictly, and jointly and severally, liable for the  
6 release of hazardous substances from the AMPAC Site into the environment.

7           79.     AMPAC has not resolved its liability to, nor has it entered into a good faith  
8 settlement pursuant to Nevada Revised Statutes Section 17.245 with NERT, the United States or  
9 the State of Nevada with respect to the contamination caused by AMPAC associated with the Weir  
10 Project.

11           80.     NERT has paid more than its equitable share of the common liability with respect  
12 to the groundwater treatment associated with the Weir Project.

13           81.     NERT has discharged by payment the common liability between NERT and  
14 AMPAC with respect to the groundwater treatment associated with the Weir Project.

15           82.     NERT is entitled to recover contribution from AMPAC for costs incurred in  
16 connection with the treatment associated with the Weir Project.

17                               **FIFTH CAUSE OF ACTION**

18                               **(Restitution/Unjust Enrichment)**

19           83.     The Trustee repeats and re-alleges all of the foregoing allegations and incorporates  
20 the same by this reference.

21           84.     NERT conferred a benefit on AMPAC, without AMPAC providing proper  
22 compensation to NERT.

23           85.     AMPAC is responsible for treating the perchlorate-contaminated groundwater  
24 emanating from the AMPAC Site, including the vast majority of the perchlorate-contaminated  
25 groundwater associated with the Weir Project.

26           86.     AMPAC knew, or should have known, that the vast majority of the perchlorate-  
27 contaminated groundwater associated with the Weir Project originated from the AMPAC Site.

28



1           87.     AMPAC knows that NERT has spent over \$36 million to treat perchlorate-  
2 contaminated groundwater associated with the Weir Project for which AMPAC is legally  
3 responsible.

4           88.     AMPAC has failed and/or refused to reimburse NERT for its expenditures to treat  
5 perchlorate-contaminated groundwater associated with the Weir Project that originated from the  
6 AMPAC Site.

7           89.     AMPAC was unjustly enriched by NERT's treatment of the perchlorate-  
8 contaminated groundwater associated with the Weir Project for which AMPAC was responsible,  
9 and by unjustly benefitting from NERT's expenditure of over \$36 million to treat AMPAC's  
10 perchlorate-contaminated groundwater associated with the Weir Project.

11           90.     AMPAC appreciated this benefit by acknowledging that some of AMPAC's  
12 perchlorate-contaminated groundwater is not captured by its treatment system and enters the Las  
13 Vegas Wash in the vicinity of the Weir Project.

14           91.     AMPAC accepted and retained this benefit by allowing NERT to treat its  
15 perchlorate-contaminated groundwater knowing that AMPAC's groundwater treatment system was  
16 not capturing all of the contaminated groundwater originating from the AMPAC Site, and by its  
17 failure to take any action, or to reimburse NERT for its expenditures, towards the treatment of the  
18 perchlorate-contaminated groundwater associated with the Weir Project.

19           92.     It would be highly inequitable and unjust for AMPAC to retain the benefit of  
20 NERT's groundwater treatment associated with the Weir Project without payment of the value of  
21 the treatment.

22           93.     NERT is entitled to judgment against AMPAC in an amount as determined by the  
23 Court, plus interest at the judgment rate and attorneys' fees and costs as permitted by law.

24                   **Prayer for Relief**

25           WHEREFORE, the Trustee, on behalf of NERT, prays that judgment be entered in its favor  
26 and against Defendant as follows:

27           1.     declaring AMPAC liable for all or a portion of the response costs NERT has incurred  
28 and may incur in the future in connection with the Weir Project;

2. awarding damages against AMPAC for the portion of the costs that NERT has expended (with interest thereon from the date of expenditure) in cleanup in connection with the Weir Project and in other activities preliminary and subsequent thereto;

3. awarding NERT contribution against AMPAC for response costs and damages that it has and will incur (with interest thereon from the date of expenditure) in connection with the Weir Project that are allocable to AMPAC;

4. awarding NERT damages against AMPAC (with interest thereon from the date of expenditure) for unjust enrichment for the value of the benefit AMPAC received through NERT's actions with respect to the Weir Project;

5. awarding NERT its costs and attorney fees incurred in connection with this suit and in connection with the investigation and remediation conducted in connection with the Weir Project; and,

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6. awarding NERT such other and further relief as the Court deems appropriate.

Dated this 21st day of June, 2021.

FENNEMORE CRAIG, P.C.

By: /s/Josh Reid

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Le Petomane XXVII, Inc., not individually, but  
solely in its representative capacity as trustee of  
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<sup>1</sup> Attorneys Maassen, McKenna and O'Neill will comply with LR IA 11-2 within 14 days.